HONOURABLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HONOURABLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.22343 OF 2006

Between:

Andhra Pradesh State Trading Corporation Ltd.,
represented by its Vice-Chairman & Managing
Director, Hyderabad.

…Petitioner

And

Syndicate Bank,
represented by its Chief Manager,
Hyderabad and another.

…Respondents

:: O R D E R ::

Counsel for the petitioner : Sri T.Anantha Babu,
Senior Advocate, assisted by
Sri N.Jayasurya.

Counsel for respondent No.1 : Sri E.Madan Mohan Rao

Counsel for respondent No.3 : Sri A.Rajashekar Reddy

14th December 2006

Per G.S.SINGHVI, C.J.

In this petition filed under Article 226 of the Constitution of India, Andhra Pradesh State Trading Corporation Limited (for short, 'the Corporation') has questioned the legality of orders dated 4-9-2006 passed by Debts Recovery Tribunal, Hyderabad (for short, 'the Tribunal') on two applications filed by Syndicate Bank, Hyderabad (for short, 'the bank') under Section 19 (12) and (13)(A) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (for short, 'the Act').

Although the petitioner has set out in detail the history of the dispute between the parties, we do not consider it necessary to advert to the factual matrix in detail. For the purpose of this order, it is sufficient to note that the bank has filed an application under Section 19 of the Act for recovery of a sum of Rs.27,16,65,571.35 p., which has been registered as O.A.No.253 of 2006 and is pending adjudication by the Tribunal. On its part, the Corporation has filed suit in the Court of Chief Judge, City Civil Court, Hyderabad for recovery of Rs.13,21,43,907/- with interest @ 12% per annum. In the alternative, it has been prayed that defendant No.2 (the bank herein) be restrained from initiating steps for recovery of the amount credited on 31-3-2004. Along with the suit, the Corporation filed an application under Order 39 Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908. Initially, the trial court passed an order of injunction, but, later on, vacated the same. The Corporation challenged the order of the trial court in C.M.A.No.802 of 2006, which is pending before this Court. In CMP No.1613 of 2006 filed by the appellant, a Division Bench of this Court has restrained the bank from initiating steps for recovery of the amount claimed in its letter dated 21-10-2004.

During the pendency of the O.A. filed by it and C.M.A. filed by the Corporation, the bank filed two interlocutory applications on 28th August, 2006. In one of the applications, which stands registered as

I.A.No.584 of 2006, the bank has prayed for restraining the petitioner Corporation from transferring or alienating the properties specified in Schedules 'A' and 'B' or creating any charge over them. In the second application, which stands registered as I.A.No.585 of 2006, the bank has prayed for an order of attachment before judgment in relation to the properties specified in Schedule 'C'. Both the applications were presented by the bank before the Tribunal at Visakhapatnam because there is no Presiding Officer to the Tribunal at Hyderabad and by notification No.F.13/6/2002-DRT issued under Section 4 (2) of the Act, the Government of India, Ministry of Finance, Department of Economic Affairs (Banking Division) has authorized the Presiding Officer of Debts Recovery Tribunal, Visakhapatnam to discharge the functions of the Presiding Officer of Debts Recovery Tribunal, Hyderabad in addition to his own charge.

The learned Presiding Officer of the Tribunal at Visakhapatnam, who, as mentioned above, has been vested with the power to discharge the functions of the Presiding Officer of the Tribunal at Hyderabad, without issuing notice to the petitioner, straight away passed orders dated 4-9-2006, the relevant portions of which are extracted below:

> "I.A.No.584 of 2006
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> Heard. Perused O.A., affidavit, petition and documents. Having considered the matter, I feel that the petitioner bank has prima facie case and balance of convenience is in favour of the Bank. If injunction is not granted then it will lead to complications and the bank will suffer irreparable loss. Hence, interim injunction and notice, debarring the respondent from alienating, encumbering, parting with possession and/or creating any third party right, title, interest of any nature whatsoever in respect of the Schedule "A" and "B" properties till disposal of the OA without prior permission of Tribunal."
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> "I.A.No.585 of 2006
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> This application is filed for attachment of Schedule "C" mentioned property before judgment and huge sums of money are due to the applicant bank and it is alleged in the affidavit

> that the respondent is trying to transfer the mortgaged properties to third parties and if the respondent succeeds in their attempt, the applicant bank may not be able to recover the application amount fully. Therefore, the respondent is directed to furnish the security for the application amount within 24 hours. In the meanwhile, attachment shall be made in respect of "C". Call on 13-9-2006."

The petitioner has questioned the above reproduced orders on several grounds including the one that the Presiding Officer of the Tribunal at Visakhapatnam did not have jurisdiction to entertain the disputes relating to the areas which fall within the domain of the Tribunal at Hyderabad. Another plea raised by the petitioner is that the learned Presiding Officer committed a jurisdictional error by passing ex parte interim order ignoring the fact that the Corporation is a government undertaking and there is no basis for the assumption that it would alienate the property or create a charge over it.

We have heard Sri T.Anantha Babu, Senior Advocate appearing for the petitioner and Sri E.Madan Mohan Rao, learned counsel for the bank and perused the record.

In our opinion, the petitioner's challenge to the jurisdiction of the Tribunal to entertain the applications filed by the bank is liable to be negatived because, as mentioned above, vide notification dated 7-4-2006 issued under Section 4(2) of the Act, the Government of India authorized the Presiding Officer of the Tribunal at Visakhapatnam to discharge the functions of the Presiding Officer of the Tribunal at Hyderabad in addition to his own charge. Section 4 (2) of the Act, which begins with a non-obstante clause, empowers the Central Government to authorize the Presiding Officer of one Tribunal to discharge the functions of the Presiding Officer of another Tribunal. Therefore, the Presiding Officer of the Tribunal at Visakhapatnam did not commit any jurisdictional mistake by entertaining the applications of the bank.

Notwithstanding the above conclusion, we are inclined to agree

with Sri T.Anantha Babu that the orders under challenge are vitiated due to total non-application of mind by the Presiding Officer of the Tribunal. A reading of the applications, which stand registered as I.A.Nos.584 and 585 of 2006, shows that the prayer made by the bank for injuncting the petitioner from alienating or transferring the properties specified in Schedules A and B in any manner or creating a charge as also the prayer made for attachment before judgment are entirely founded on the reasons enumerated in what have been described as affidavits filed in support of the applications. Neither of the affidavits has been verified by the officer concerned either on the basis of his personal knowledge or knowledge/information derived from any identified source or on the basis of advice given by the advocate. Therefore, the two affidavits could not have been relied by the Tribunal for forming an opinion that the applicant (the bank) has been able to make out a case for issuing ex parte interim orders.

We are further of the view that the bald averments contained in the affidavit of Sri Sujir Prabhakar could not have been made basis for passing interim orders, which had grave adverse consequences on the functioning, activities and business of the petitioner Corporation, which is a State Government Undertaking. We are not suggesting that the Tribunal does not have the jurisdiction, power or authority to entertain the applications for interlocutory orders and even pass ex parte interim orders, but we do not have any hesitation to observe that before passing such ex parte interim orders, the Tribunal has to satisfy itself about the existence of the factors like prima facie case, balance of convenience, irreparable injury and above all public interest. Use of the stock words or phrases in a judicial order depicting the existence of prima facie case and balance of convenience cannot be substitute of the requirement of an objective application of mind by a quasi-judicial body like the Tribunal. In our opinion, before passing ex parte orders, the learned Presiding Officer of the Tribunal was duty bound to carefully scrutinise the factual matrix of the case and examine the

issues of balance of convenience and irreparable injury and then determine whether the applicant has been able to make out a case for grant of ad-interim order. The orders impugned in the present case do not show objective consideration of these factors. The observations made by the Tribunal that if injunction is not granted, then it will lead to complications and that if the respondents succeed in their attempt, the bank may not be able to recover the application amount fully, are merely written rhetoric and do not reflect the objective application of mind by the officer of the Tribunal.

Since the applications filed by the bank are yet to be finally adjudicated, we refrain from expressing any conclusive opinion on the tenability of the prayer made therein. We have no hesitation to hold that the learned Presiding Officer of the Tribunal gravely erred by passing

ex parte interim orders, which have serious adverse impact on the functioning and business of the Corporation.

In the result, the writ petition is allowed. Orders dated 4-9-2006 passed by the Tribunal are set aside. I.A.Nos.584 and 585 of 2006 filed by the bank shall now be decided by the Tribunal after giving reasonable opportunity to the parties to file their respective causes in the form of affidavits and documents.

As a sequel to disposal of the writ petition in the manner indicated above, WPMP.Nos.28377, 28378 and 28379 of 2006 filed by the petitioner for interim relief are disposed of as infructuous.

G.S.SINGHVI, C.J.

14th December, 2006.

C.V.NAGARJUNA REDDY, J.

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